SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 814

THE STATE TAX COMMISSION OF UTAH,

Petitioner;

vs.

MALCOLM P. ALDRICH AND MARY S. HARKNESS, ADMINISTRATORS WITH THE WILL ANNEXED OF THE ESTATE OF EDWARD S. HARKNESS, DECEASED.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH.

REPLY BRIEF OF PETITIONER.

J. LAMBERT GIBSON,
GARFIELD O. ANDERSON,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Reply brief of petitioner	1
I. Effect and applicability of Uniform Stock-Transfer Act solely for decision of Utah Supreme Court	2
II. The provisions of the Uniform Stock Transfer Act, as adopted into Utah law, have no application to the case at bar	4
Conclusion	11

Table of Cases Cited.

Alabama v. *King and Boozer*, — U. S. —, 86 L. Ed. Adv. Op. 1, — Sup. Ct. —	4
Brett's Estate, In re, 205 N. Y. S. 154, 42 A. L. R. 365	9
Curry v. *McCanless*, 307 U. S. 357, 83 L. Ed. 1339, 59 Sup. Ct. 900	9
Dorchy v. *Kansas*, 272 U. S. 306, 71 L. Ed. 248, 47 Sup. Ct. 86	4
First National Bank of Boston v. *Maine*, 284 U. S. 312, 76 L. Ed. 313, 52 Sup. Ct. 174	8
Guaranty Trust Company of New York v. *Blodgett*, 287 U. S. 509, 77 L. Ed. 463, 53 Sup. Ct, 244	4
Lillie v. *First Federal Savings & Loan Association*, 194 So. 903	5
Mills v. *Jacobs*, 333 Pa. 231, 4 Atl. (2d) 152	7
Missouri, ex rel Hurwitz v. *North*, 271 U. S. 40, 70 L. Ed. 818, 46 Sup. Ct. 384	4
Newell v. *Tremont Lumber Co.*, 161 La. 649, 109 So. 344	6
Nickey v. *Mississippi*, 292 U. S. 393, 78 L. Ed. 1323, 54 Sup. Ct. 743	4
Schuylkill Trust Co. v. *Pennsylvania*, 302 U. S. 506, 82 L. Ed. 392, 58 Sup. Ct. 295	9
Untermyer v. *State Tax Commission*, — Utah —, 116 P. (2d) 926	2

Page

Worcester County National Bank of Worcester, Ex parte, 279 U. S. 347, 73 L. Ed. 733, 49 Sup. Ct. 368 4

STATUTES CITED.

Revised Statutes of Utah, 1933, Section 18-3-2 8
Revised Statutes of Utah, 1933, Sections 18-2-32, 80-12-34, 80-12-38, 80-12-2, 80-12-3 8
Uniform Laws Annotated (1922) Volume 6 and 1940 Cumulative Annual Pocket Part 5
Uniform Stock Transfer Act, Chapter 3, Title 18, Revised Statutes of Utah, 1933 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 814

THE STATE TAX COMMISSION OF UTAH,
Petitioner,

vs.

MALCOLM P. ALDRICH AND MARY S. HARKNESS,
ADMINISTRATORS WITH THE WILL ANNEXED OF THE ESTATE OF EDWARD S. HARKNESS, DECEASED.

REPLY BRIEF OF PETITIONER.

In this reply brief, petitioner desires to answer only one point raised in respondents' brief—that of the effect and applicability of the Uniform Stock Transfer Act as enacted into Utah law.

We submit that, first, the question of the effect and applicability of that Act is solely and exclusively a question for the Supreme Court of the State of Utah and, second, that the provisions of that Act are wholly irrelevant, have no bearing upon and were never intended to apply to taxation questions.

I.

Effect and Applicability of Uniform Stock Transfer Act Solely for Decision of Utah Supreme Court.

Counsels' argument appearing at pages 41 to 48 of respondents' brief concerning the Uniform Stock Transfer Act is but a summary of the same argument made to the Supreme Court of the State of Utah in this case. In the Supreme Court of Utah, the instant case and the case of *Untermyer* v. *State Tax Commission*, (1941) — Utah —, 116 P. (2d) 926, were argued together as companion cases, although never consolidated. Counsel for respondents in the instant case, both by his brief in the Utah Supreme Court and in oral argument before that Court, adopted the brief of counsel for the Untermyer Estate as to questions of Utah law and confined the brief in the instant case in the main to the Federal Constitutional question. In the Untermyer brief the attempt was made to have the Utah Court place weight and reliance on the opinions of the Uniform Stock Transfer Act as adopted into Utah Statutes. Over fifty printed pages of the Untermyer brief (adopted, as stated, by counsel for petitioners here) were devoted to the Uniform Stock Transfer Act provisions in Utah law. The question was covered in a reply brief by the Tax Commission and was argued extensively in oral argument. Therefore, we submit that the Utah Court had that question before it, and has decided it adversely to the respondents. See decision in instant case, — Utah —, 116 P. (2d) 923 and *Untermyer* v. *State Tax Commission*, — Utah —, 116 P. (2d) 926. The question is conspicuous by its absence from comment in the majority decision of the Utah Supreme Court. By that intentional omission, the Utah Court has indicated its decision that

the provisions of the Uniform Stock Transfer Act have no materiality with, no application to, no bearing on the question of whether Utah's laws intend to levy the tax under the circumstances of the case at bar. The question having been so completely presented to the Utah Court, and being one for the exclusive determination of that court, we regret counsels' attempt to inject it into the argument before this Court.

The question of whether Utah's laws do levy the tax is one of statutory construction for the Supreme Court of Utah. This question has been decided by that Court in the affirmative. See 116 P. (2d) 923 and 116 P. (2d) 926.

Furthermore, counsel for respondents admit this position in the first part of their brief, and then, strangely seem to indicate some desire to retract the admission at pages 41 to 48. At pages 3-4 of their brief, respondents say:

> "Respondents concede that the Utah tax in question is an estate or transfer tax *and that the provisions of the tax statute were intended to be broad enough to reach shares of stock of Utah corporations owned by non-resident decedents. Consequently, if the State of Utah could constitutionally tax the testamentary transfer of the shares of the Union Pacific Railroad Company owned by Mr. Harkness, it has done so by its Inheritance Tax Law in effect at the time of his death.*" (Italics ours.)

We present that *this* is a correct statement of the nature of the problem presented to this Honorable Court—that the Utah Supreme Court has decided *all* questions of state statutory interpretation and application, holding that the tax is levied by Utah law, subject only to the question of the constitutionality of the tax so levied, on which only this Court can pronounce judgment.

We believe that this Court will accept as conclusive the interpretation by the Utah Supreme Court of its own state statutes and the applicability thereof.

Missouri, ex rel Hurwitz v. *North* (1926) 271 U. S. 40, 70 L. Ed. 818, 46 S. Ct. 384;

Dorchy v. *Kansas* (1926) 272 U. S. 306, 71 L. Ed. 248, 47 S. Ct. 86;

Ex parte Worcester County National Bank of Worcester (1929) 279 U. S. 347, 73 L. Ed. 733, 49 S. Ct. 368;

Guaranty Trust Company of New York v. *Blodgett*, (1933) 287 U. S. 509, 77 L. Ed. 463, 53 S. Ct. 244;

Nickey v. *Mississippi* (1934) 292 U. S. 393, 78 L. Ed. 1323, 54 S. Ct. 743;

Alabama v. *King and Boozer* (1941) — U. S. —, 86 L. Ed. Adv. Op. 1, — S. Ct. —.

We earnestly submit, therefore, that the question of whether the Uniform Stock Transfer Act, as enacted into Utah statutory law (Chapter 3, Title 18, Revised Statutes of Utah, 1933), has any bearing on the problem presented by the case at bar, is not properly before this Honorable Court and should not be considered in the determination by this Court.

II.

The Provisions of the Uniform Stock Transfer Act, as Adopted Into Utah Law, Have No Application to the Case at Bar.

Without retracting from the position set forth under Point I hereof, but solely for the purpose of demonstrating the fallacy of respondents' argument based upon the Uniform Stock Transfer Act, fallacies pointed out to and adopted by omission by the Utah Supreme Court, we respectfully present very briefly the following points.

(1) The statutory provisions contained in the Uniform Stock Transfer Act relate to and were intended to cover only the commercial phases of stock transfers. They are intended, as was the Negotiable Instruments Law in connection with bills and notes, to provide for certain uniform rules governing the method of transferring certificates of stock and making such certificates more readily negotiable in the commercial marts. See *Lillie v. First Federal Savings & Loan Association,* (La., 1940) 194 So. 903; see also *Uniform Laws Annotated,* (1922), Volume 6 and 1940 Cumulative Annual Pocket Part, especially the preface thereto and the case notes to section 1. Nowhere in the Act will any reference be found to taxation in any form.

Counsel refers to this Uniform Act as attempting to enact into statutory law, the mercantile theory of stock certificates. So, also, did the Negotiable Instruments Law attempt to enact the mercantile theory of bills and notes into law, yet counsel would not have us conclude that the State of the holder's domicile, for example, could not tax the transfer at death of a note, even though the paper were located in another State? Counsel's whole theory of the supremacy of the domiciliary State's jurisdiction would be blasted by such a theory and, therefore, neither would counsel admit that the domiciliary State loses its tax jurisdiction over the estate of the owner of stock, though the certificate may be elsewhere. And what happens to counsel's position as to double taxation if we apply the Uniform Stock Transfer Act provisions to inheritance tax cases? The domiciliary State could tax, of course, says counsel. But, apply the Uniform Act, and so could the State where the piece of paper was located. We submit that the Uniform Stock Transfer Act has no application to taxation problems.

(2) Counsel's treatment of the Uniform Stock Transfer Act fails to disclose a single case dealing with death duty taxes or, for that matter, taxes in any form in relation to the Uniform Stock Transfer Act. We state this in spite of the citation of the case of *Newell* v. *Tremont Lumber Company*, 161 La. 649, 109 So. 344. This case has been discussed in our brief at page 28 and we treat it again here only because we wish to emphasize our disagreement with the interpretation counsel for respondents would put on that case. An analysis of this case will disclose that it was decided in 1926. Louisiana, as will also be disclosed by reference to the case itself, adopted its Inheritance Tax Law in 1921 but had adopted the Uniform Stock Transfer Act in 1914. Thus, even conceding for the sake of argument that the Uniform Stock Transfer Act could have any amendatory effect upon an inheritance tax law, the Louisiana case would have no bearing on the case at bar because the later law, namely, the Inheritance Tax Law of Louisiana, would then have to be interpreted in light of statutes previously enacted. This we believe will be accepted as a cardinal rule of statutory construction, namely, that a later act is to be interpreted in the light of statutes already in existence, and further, that statutes already in existence are not amended by a later act unless that act specifically or by necessary implication amends the previous statutes. There is nothing in the later Uniform Stock Transfer Act which specifically or by necessary implication changes, modifies or amends in any way the earlier Utah Inheritance Tax Law. Stock transfers factually identical with those in the case at bar were taxed and the taxation thereof upheld prior to 1932 under the same statute as now exists in Utah. See instant decision, 116 P. (2d) 923. Furthermore, the inheritance tax statute of Louisiana taxed only the transfer of property "*physically*" in the State of Louisiana. The use of the word "physically" must

have been intentional. The Utah statute contains no such limiting or qualifying phrase. Even the quotation from the case cited by counsel for respondents at pages 46-47 of their brief demonstrates the stress placed upon the word "physical". Without that word in the statute, the decision might very well have gone the other way.

We, therefore, maintain that the complete absence of any adjudicated case dealing with or recognizing in any way any connection between the Uniform Stock Transfer Act and death duty taxation, in fact taxation in any form, can mean only one thing—that the Uniform Stock Transfer Act was never intended and has never been thought to have any bearing upon taxation. *Mills* v. *Jacobs*, (1939) 333 Pa. 231, 4 Atl. (2d) 152, 155.

(3) The Uniform Stock Transfer Act, we submit, applies only to *inter vivos* transactions. By the very terms of the Act itself an executor or administrator of an estate cannot transfer the property represented by the certificate without authority of the probate court having jurisdiction of the administration of the estate of the deceased owner. See Sec. 18-3-2, Revised Statutes of Utah, 1933. We are not here dealing with taxation of *inter vivos* transactions in stock but are dealing with the taxation of transfers coming within the terms of our Inheritance Tax Law. Counsel for respondents concede this point, also, at page 46 of their brief. The quotation from Professor Beale adds nothing to respondents' position, for that quotation by its very terms, shows that the Uniform Stock Transfer Act has *not* been applied to problems of estate administration.

(4) If the intent of the Utah Legislature in adopting the Uniform Stock Transfer Act, as counsel for respondents would have us believe upon no authority but their own arguments, was to strip Utah of all jurisdiction for all purposes over shares of stock of domestic corporations, would it not

have been a simple matter for the legislature to have specifically so stated somewhere in the statutes adopting those provisions into Utah law? The complete absence of any such specific relinquishment of jurisdiction, and, we submit, the complete absence of any fairly reasoned inference of relinquishment of jurisdiction for tax purposes, at least, conclusively demonstrates that no such intent is to be read into those statutory provisions. On the contrary, statutory provisions evidencing conclusively a contrary intent were on the Utah statute books long before adoption of the Stock Transfer Act and have remained there since. See especially sections 18-2-32, 80-12-34, 80-12-38, 80-12-2, 80-12-3, Revised Statutes of Utah, 1933.

(5) The Utah death duty tax law was adopted in 1901. It has remained on the statute books of that State unchanged, so far as material to the present case, from that date to the present time. The State of Utah assessed and collected inheritance tax upon the transfer of stock in identical factual situations until 1932. The Uniform Stock Transfer Act was adopted by the State in 1927; yet during the five years following the adoption of the Uniform Stock Transfer Act, during which inheritance taxes on similar transfers were collected, no one judicially raised or contended for the proposition that the Inheritance Tax Law had been amended by the adoption of the Uniform Stock Transfer Act so as to exclude from inheritance taxation the transfer of stock in domestic corporations owned by nonresidents. The only reason that the State of Utah ever ceased the levy and collection of the tax in situations such as the present was the interposition by the Supreme Court of the United States of its decision in *First National Bank of Boston* v. *Maine* (1932), 284 U. S. 312, 76 L. Ed. 313, 52 S. Ct. 174, which, as we have demonstrated in our main brief, is no longer law. See decision in instant case, 116 P. (2d) 923.

(6) Counsel for respondents fail to analyze another feature of the claimed effect of the Uniform Stock Transfer Act. New York adopted the Uniform Stock Transfer Act in 1913; yet New York assessed and collected its death duty tax upon the transfer of shares of stock of domestic corporations owned by nonresident decedents for many years subsequent to the enactment of the Uniform Stock Transfer Act. See *In re Brett's Estate*, 205 N. Y. S. 154, 42 A. L. R. 365. Massachusetts adopted the Uniform Stock Transfer Act in 1910; yet at least three cases found in the list of cases at 42 A. L. R. 365, demonstrate that Massachusetts also continued to assess and collect its death duty tax in similar situations for many years subsequent to the adoption of that act. Similarly, New Jersey adopted the Uniform Stock Transfer Act in 1916; yet at least six cases cited at 42 A. L. R. 366, establish that New Jersey also assessed and collected its death duty tax under identical factual situations after the adoption of that act. Pennsylvania adopted the Stock Transfer Act in 1912; yet *Schuylkill Trust Company* v. *Pennsylvania*, (1938), 302 U. S. 506, 82 L. Ed. 392, 58 S. Ct. 295, held Pennsylvania's jurisdiction to tax all shares of domestic corporations valid and constitutional. Tennessee adopted the Uniform Stock Transfer Act in 1925. Yet in *Curry* v. *McCanless*, (1939) 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900, Tennessee was permitted by this Court to tax the transfer at death of stock, the certificates representing which were physically in Alabama—without any apparent difficulty by reason of the Uniform Stock Transfer Act. Alabama also adopted that act in 1931. (For reference to the statutory provisions of the various States having enacted the Uniform Stock Transfer Act, showing also the date of enactment, see page 6 of the 1940 Cumulative Annual Pocket Part to Uniform Laws Annotated, Volume 6.)

The cited examples are merely indicative of the unanimity of the decided cases from state jurisdictions having adopted the Uniform Stock Transfer Act demonstrating the total inapplicability of Uniform Stock Transfer Act to problems of taxation. We are not here asserting jurisdiction over shares of stock in domestic corporations of Utah for purpose of garnishment; nor for purpose of suits by adverse claimants to title to the shares; nor for any purpose other than taxation. Jurisdiction may have been ceded away by Utah for some *limited* purposes, but not for taxation purposes. In fact, we submit that jurisdiction has been ceded away by Utah only for those *limited* purposes *specifically* set forth in the Act. Taxation is not one of them. We assert only jurisdiction in the State of Utah over the shares of stock of domestic corporations for taxation purposes. As was so aptly stated in *Mills* v. *Jacobs, supra,* at 4 Atl. (2d) 155, where the court was referring to situs of shares for purposes of taxation:

> "But this doctrine is not applicable here, for it is evident that the situs for purposes of taxation and the situs for purposes of attachment may differ. Guaranty Trust Co. of New York *v.* Fentress, 7 Cir., 61 F. (2d) 329, 334. This is conclusively shown by the fact that even prior to 1911, when no foreign shares were subject to attachment in Pennsylvania since the situs for that purpose was regarded as being at the domicile of the corporation, nevertheless such shares were taxable in this state on the theory that the situs for tax purposes was at the domicile of the owner. McKeen *v.* County of Northampton, 49 Pa. 519, 88 Am. Dec. 515; In re Short's Estate, 16 Pa. 63."

Conclusion.

We, therefore, respectfully present that the Uniform Stock Transfer Act and counsels' arguments based thereon, not only are improperly presented to this Court but further have no bearing on the issues in the case at bar.

J. Lambert Gibson,
Garfield O. Anderson,
Counsel for Petitioner.